

COLL.
NORTH AMERICA. No. 2. (1867.)

FURTHER CORRESPONDENCE

RESPECTING

BRITISH AND AMERICAN CLAIMS

ARISING OUT OF THE LATE

CIVIL WAR

IN

THE UNITED STATES.

Presented to both Houses of Parliament by Command of Her Majesty.
1867.

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Further Correspondence respecting British and American Claims
arising out of the late Civil War in the United States.

No. 1.

Lord Stanley to Sir F. Wright Bruce.

Sir,

Foreign Office, September 10, 1867.

THE Minister of the United States called upon me to-day, and communicated to me a despatch, of which, however, he was not authorized to give me a copy, from Mr. Seward, dated the 12th of August, in reply to my despatch to you of the 24th of May, respecting the mutual claims of the two countries on each other arising out of the late civil war.

By this despatch Mr. Adams is authorized to assure me that Mr. Seward did not understand my previous offer of arbitration to apply only to claims arising out of the depredations of the "Alabama," to the exclusion of those arising out of the depredations of vessels of the like character, but, on the contrary, understood the offer to apply equally to all such claims.

The President, Mr. Seward says, considers the terms of the offer of the British Government to go to arbitration upon the question whether, in the matters connected with all those vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British Government and those who acted upon its authority, was such as would involve a moral responsibility to make good, either in whole or in part, the losses of American citizens, to be at once comprehensive and sufficiently precise to include all the claims of American citizens for depredations on their commerce during the late rebellion, which have been the subject of complaint on the part of the Government of the United States.

But Mr. Seward goes on to say that the Government of the United States would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British Government, its officers, agents, and subjects, towards the United States in regard to the rebellion and the rebels, as they occurred during that rebellion, are among the matters which are connected with the vessels whose depredations are complained of; just as in the case of general claims, alluded to in my despatch, the actual proceedings and relations of Her Majesty's Government, its officers, agents, and subjects, in regard to the United States in regard to the rebellion and the rebels, are necessarily connected with the transactions out of which those general claims arose.

Mr. Seward further observes that my plan seems to be to constitute two descriptions of tribunals: one an arbiter to determine the question of the moral responsibility of the British Government in regard to the vessels of the "Alabama" class; and the other a Mixed Commission to adjudicate the so-called general claims of both sides; and a contingent reference to the same or other Mixed Commissions to ascertain and determine the amount of damages for indemnity to be awarded in the cases examined by the first tribunal in the event of a decision of moral responsibility in favour of the United States. But Mr. Seward says that the Government of the United States do not consider any distinction as to principle between the two tribunals to be necessary, and that in every case they agree only to unrestricted arbitration. It may be convenient, indeed, that the claims should be distributed between the two tribunals, both of which, however, the Government of the United States consider should proceed upon the same principle, and be clothed with the same powers.

Mr. Seward concludes his despatch by saying that the President will be gratified if the

explanations contained in it should conduce to the removal of the difficulties which have heretofore prevented the two Governments from coming to an amicable and friendly understanding and arrangement.

I reserve for a future occasion any observations that I may have to offer on Mr. Seward's despatch.

I am, &c.
(Signed) STANLEY.

No. 2.

Lord Stanley to Mr. Ford.

Sir,

Foreign Office, November 16, 1867.

IN my despatch to Sir F. Bruce of the 10th September I confined myself to a mere statement of the substance of a despatch from Mr. Seward which Mr. Adams had communicated to me in reply to my despatch of the 24th of May respecting the claims arising on either side out of the events of the late civil war in the United States.

Her Majesty's Government having, since the date of my despatch, fully considered the terms of Mr. Seward's despatch, I will no longer delay acquainting you, for communication to that Minister, with the impression which it has made upon them.

Her Majesty's Government observe that the President of the United States considers the terms used in my despatch, with reference to the so-called "Alabama" claims, to be at once comprehensive and sufficiently precise to include all the claims of American citizens for depredations upon their commerce during the late rebellion, which have been the subject of complaint upon the part of the Government of the United States; those terms being, to quote the precise words of my despatch of the 24th of May, applicable to this class of claims, and which, in substance, repeats those used by me in my despatch of the 9th of March, that the question on which Great Britain was ready to go to arbitration was, "whether in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British Government and by those who acted upon its authority was such as would involve a moral responsibility on the part of the British Government to make good, either in whole or in part, the losses of American citizens."

In the same and in previous despatches it will be found that, whilst agreeing to this limited reference as regards the so-called "Alabama" claims, I have repeatedly stated that Her Majesty's Government could not consent to refer to a foreign Power to determine whether the policy of Her Majesty's Government in recognizing the Confederate States as belligerents was or was not suitable to the circumstances of the time when the negotiation took place. After referring, however, to the terms of my despatch of the 24th of May, Mr. Seward goes on to say that, in the view taken by the United States' Government, that Government would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British Government, its officers, agents, and subjects, towards the United States in regard to the rebellion and the rebels as they occurred during that rebellion, are among the matters which are connected with the vessels whose depredations are complained of; just as, in the case of the general claims alluded to by me, the actual proceedings and relations of Her Majesty's Government, its officers, agents, and subjects in regard to the United States, in regard to the rebellion and the rebels, are necessarily connected with the transactions out of which those general claims arise.

The language thus used by Mr. Seward appears to Her Majesty's Government to be open to the construction that it is the desire of the United States' Government that any tribunal to be agreed upon in dealing either with the so-called "Alabama" claims or with the "general claims" might enter into the question whether the act of policy of Her Majesty's Government in recognizing the Confederate States as a belligerent Power was or was not suitable to the circumstances of the time when the recognition was made; a construction which, after the distinct and repeated avowal of Her Majesty's Government that they could not consent to a reference of such a question, Her Majesty's Government can hardly suppose that it was intended by Mr. Seward that the passage in his despatch should bear.

But to prevent any misapprehension on this subject, Her Majesty's Government think it necessary distinctly to say, both as regards the so-called "Alabama" claims brought forward by citizens of the United States and as regards the general claims, that they cannot depart, directly or indirectly, from their refusal to "refer to a foreign Power to determine whether the policy of recognizing the Confederate States as a belligerent

Power was or was not suitable to the circumstances of the time when the negotiation was made."

As regards the so-called "Alabama" claims, the only point which Her Majesty's Government can consent to refer to the decision of an arbiter is the question of the moral responsibility of Her Majesty's Government, on the assumption that an actual state of war existed between the Government of the United States and the Confederate States; and on that assumption it would be for the arbiter to determine whether there had been any such failure on the part of the British Government as a neutral in the observance, legally or morally, of any duties or relations towards the Government of the United States as could be deemed to involve a moral responsibility on the part of the British Government to make good losses of American citizens caused by the "Alabama" and other vessels of the same class.

As regards the general claims, the question of moral responsibility on the part of Her Majesty's Government does not, and cannot, come into dispute at all.

Mr. Seward rightly supposes that Her Majesty's Government contemplated two tribunals for the adjudication, one of the "Alabama" claims, the other of the general claims; the one being, in the first instance, at all events, the tribunal of an arbiter, who would be called upon to pronounce on the principles of the moral responsibility of the British Government, and on the nature of whose decision would depend the question of the appointment of a Mixed Commission for the examination in detail of the several claims of citizens of the United States to which that decision applied, namely, those arising out of the depredations of the "Alabama" and other similar vessels, and the adjudication of the sums payable in each case; the other, in its commencement and to its close, a purely Mixed Commission for the examination of the general claims of the subjects and citizens of both countries arising out of the war, and the adjudication of the sums payable by either country in each case.

The distinction between the two classes of claims is clear: the one may never come before a Mixed Commission, and therefore may not require the assistance of an arbiter to decide differences of detail arising between the Commissioners; the other, though originally brought before a Mixed Commission, may possibly require the intervention of an arbiter in case of a difference of opinion among the members of the Commission which could not be otherwise reconciled, and for which case provision would be made in the ordinary way in the Convention for the Settlement of the Mixed Claims, by the insertion of Articles in regard to the selection of an arbiter.

The functions of such an arbiter, as well as of an arbiter for a like purpose in the other Mixed Commission, for which provision would have to be made to meet the contingency of the so-called "Alabama" claims coming eventually under the cognizance of a Mixed Commission, would have nothing in common with the functions of the arbiter, to whom the question of principle involved in the last-mentioned class of claims would be referred.

Her Majesty's Government cannot but apprehend that, if Mr. Seward really requires unrestricted arbitration as applicable to both classes of claims, and that the tribunal in both classes of cases should proceed upon the same principles and be clothed with the same powers, he has not fully considered the wide and inevitable distinction which exists between the classes; and in directing you to submit to the consideration of Mr. Seward the explanations and observations contained in this despatch, I have to instruct you to express the earnest hope of Her Majesty's Government that the Government of the United States will, on further reflection, accept without hesitation the proposal made in my despatches to Sir F. Bruce of the 9th of March and of the 24th of May, both of this year, namely, "limited reference to arbitration in regard to the so-called 'Alabama' claims," and "adjudication by means of a Mixed Commission of general claims."

You will furnish Mr. Seward with a copy of this despatch.

I am, &c.
(Signed) STANLEY.

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